

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**IN RE: TERRORIST ATTACKS ON
SEPTEMBER 11, 2001**

MDL No. 1570 (RCC)

This document relates to:

*Thomas E. Burnett, Sr., et al. vs. Al Baraka
Investment and Development Corp., et al.*
03 CV 9849 (RCC)

*Thomas E. Burnett, Sr., et al. vs. Al Baraka
Investment and Development Corp., et al.*
03 CV 5738 (RCC)

**PLAINTIFFS' SUR-REPLY TO DEFENDANT AL JOMAIH'S
MOTION TO DISMISS**

The Defendant, Mohammad Abdullah Al Jomaih ("Al Jomaih"), states in his Reply Brief that there is nothing in Plaintiffs' opposition brief or the pleadings to support the "Golden Chain" allegations against him. (Defendant's Brief at p. 5).¹ The crux of Al Jomaih's argument is that the Golden Chain document is not attached to the Complaint or to plaintiffs' response, and there is no evidence in the record concerning it. Thus, Defendant argues, even if his name is on the document, it should be ignored by the Court for the purposes of the motion to dismiss. Al Jomaih ignores, or is unaware of, the fact that Plaintiffs filed a 12(e) response for Yousef Abdul Latif Jameel ("Jameel response") on March 16, 2004. That document, which dealt specifically with the Golden Chain document, is a part of the pleadings in this case. And while the Jameel response did not specifically link Defendant Al Jomaih to the Golden Chain document, Al Jomaih himself readily admits that his name appears on it. Taken together, Third Amended Complaint

¹ The Golden Chain document is a list of financial sponsors of al Qaeda.

(“TAC”), the Jameel response, and Al Jomaih’s admission that his name appears on the Golden Chain document are sufficient to refute his argument that plaintiffs’ allegations about the Golden Chain are not properly before the Court.²

In their memorandum in opposition to Al Jomaih’s motion to dismiss, Plaintiffs set out the following about the Golden Chain document and its import to this action:

The Complaint describes in detail how the Islamic charitable system, the “Golden Chain” and donor/sponsors like Al Jomaih have been utilized to finance illegal al Qaeda activities targeted at the United States. *See* TAC Introduction, pp. 199-200, 203-205. The Complaint also alleges that al Qaeda, in particular, has used the Islamic charity system to funnel money – and hatred – through Islamic charities, with the charities’, and thus, the donor’s, material support. *Id.* at pp. 207-208. Moreover, the Plaintiffs make allegations specific to Al Jomaih and other Defendants alleging his active monetary sponsorship as a member of the “Golden Chain” the “honor roll” for al Qaeda sponsors. TAC ¶¶ 261-267.

(pp. 33) The citation to the Third Amended Complaint referenced above, however, should have also included the citation to the 12(e) Jameel response; that citation was inadvertently omitted. The Jameel response describes the significance of the Golden Chain document:

[T]he Golden Chain list, [is] the list of wealthy financial sponsors and supporters of al Qaeda. The Golden Chain was seized by the Bosnian police during searches in the offices of the charity front Benevolence International Foundation in Sarajevo, Bosnia and Herzegovina on March 2002 and presented as evidence by the United States government in the criminal prosecution of al Qaeda. . . .

The Golden Chain list was presented by the United States government as an exhibit in the Department of Justice's Government's Evidentiary Proffer Supporting the Admissibility of Co-conspirator Statements in the case of *USA v. Arnaout* (U.S.D.C., Northern District of Illinois, Eastern Division) filed on January 29, 2003. The list was also included in the Indictment of Enaam Arnaout on October 9, 2002. According to the United States government, the Golden Chain document is a list of people referred to

² Defendant does contend that he is not the same Al Jomaih, *see* Defendant’s Brief at p. 6, but that is not a matter that can be resolved on this motion to dismiss.

within al Qaeda as the "Golden Chain," all wealthy donors to their extremist cause. . . .

Originally, the Golden Chain document was seized by the Bosnian police during searches in the offices of Benevolence International Foundation in Sarajevo on March 2002. The Golden Chain was part of a computer file labeled "Tareekh Osama," or "Osama History," containing scanned images of several documents, including the formation minutes of al Qaeda. The computer files seized in Bosnia were delivered to the United States Embassy soon after the raids. The al Qaeda Golden Chain list of top Saudi financial sponsors includes bankers and businessmen, as well as former ministers of Saudi Arabia. The Golden Chain listing of Saudi donors and al Qaeda recipients includes other individuals named as Defendants herein. Major recipients of the Golden Chain are Osama bin Laden and Adel Abdul Jalil Batterjee. These two receive donations from 13 donors listed on the Golden Chain

Jamell response, ¶¶ 12-14.

These allegations listed above form part of the body of the pleadings in this matter.

The Plaintiffs' pleadings (applicable to Al Jomaih as well to other defendants) thus include allegations concerning the Golden Chain, its history, and its relevance to this litigation. Al Jomaih, in his brief, admits the following about the Golden Chain document: "The name 'Al Jomaih' appears, but even if the document's purpose and provenance were clearer, that would not implicate this Defendant." (Defendant's Brief at p. 6). Al Jomaih seems to forget that this is a motion to dismiss and that Rule 8(a) sets the standard for the sufficiency of a Complaint. The disputed significance of the Golden Chain document with Al Jomaih's name on it cannot be resolved on this motion.

Earlier in this case's procedural history, Judge Robertson, in his memorandum opinion of July 25, 2003, recommended that Defendants who believe that plaintiffs have provided insufficient details about their particular involvement seek a more definite statement pursuant to FRCP 12(e). Judge Robertson's intention was to avoid numerous filings of amended complaints. This Court adopted this same procedure in Case

Management Order No. 1 (Docket No. 16), dated March 3, 2004. If Al Jomaih believed the allegations against him were lacking in detail, then he should have requested a 12(e) statement.³ Instead, the Defendant has pursued a course of filing a motion to dismiss arguing that he has no idea as to the nature of the allegations that have been made against him, while at the same time ignoring the Jameel response, which is part of Plaintiffs' pleadings. Defendants' decision to ignore certain of the allegations that plaintiffs have made provides no basis for this Court to dismiss the Complaint.

The allegations of the pleadings concerning the network of interlocking donors, charities and other sponsors of al Qaeda demonstrates that Plaintiffs have adequately alleged the roles of numerous defendants in the sponsoring, financing and fostering al Qaeda. This is also true for Al Jomaih.

Dated: March 26, 2004

Respectfully submitted,

S/ Michael

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³ Plaintiff's counsel, Jodi Westbrook Flowers, Esq., wrote Al Jomaih's counsel on March 25, 2004, offering to utilize the 12(e) procedure (Exhibit 1).

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